I. SUMMARY

1. On May 20, 1988, Mr. Narciso Palacios (hereinafter "the petitioner") filed a petition with the Inter-American Commission on Human Rights (hereinafter "the Commission") against the Republic of Argentina (hereinafter "the State", the “Argentinean State”, or “Argentina”) for violation of his rights to a fair trial (Article 8) and to effective judicial protection (Article 25) established in the American Convention on Human Rights (hereinafter the “Convention” or “American Convention”).

2. The petitioner considers himself to be a victim of violation of the right to justice and to effective judicial protection, due to rejection--on grounds of failure to exhaust administrative remedies--of a contentious administrative suit that he brought to challenge the legality of Administrative Decree Nº 226 of June 11, 1985, which ordered his dismissal from the public post that he held.

3. On examining the merits of the case the Commission approved Report Nº 74/98 on September 28, 1998, during its 100th regular session, in accordance with the provisions contained in Article 50 of the American Convention, concluding that the petitioner was denied access to effective judicial protection on the basis of the retroactive application of a legal criterion that altered the interpretation of a legal provision applicable to his case. The Commission further concluded that because of that decision the Argentinean State had failed to fulfill its obligation to recognize and guarantee the rights to effective judicial protection and to a fair trial enshrined in Articles 25 and 8 of the American Convention. The Commission recommended that the Argentinean State permit the petitioner access to contentious administrative proceedings, in order that he might challenge the legality of the administrative act

that mandated his dismissal. The Commission also recommended that the State provide Mr. Narciso Palacios adequate compensation for the aforesaid violations.

4. The Commission transmitted Report Nº 74/98 to the State on October 14, 1998, and, in accordance with Article 50 of the Convention, granted it a period of two months in which to adopt the necessary measures to comply with the recommendations. Inasmuch as by May 7, 1999 the matter had not been settled or submitted by the Commission or by the State to the Court, the Commission approved Report Nº 80/99 reiterating the conclusions and recommendations adopted in Report Nº 74/98, pursuant to the provisions set forth in Articles 51(1) and (2) of the Convention, and prescribed a period of one month for the State to comply with those recommendations. The State failed to submit any reply during the period granted it and only the petitioner expressed his conformity with that report. Based on the information provided, the Commission decided to publish the instant report in accordance with Article 51(3) of the American Convention.

II. THE FACTS

5. Following the passing of Law 8.721, the Government of the Province of Buenos Aires proceeded to revise the legislation in force that governed its employees, with a view to reorganizing and rationalizing the provincial administration and streamlining bureaucracy. To that end, Article 89 of General Ordinance Nº 207 of October 12, 1977, amended by General Ordinance 233, establishes that:

Individuals punished in administrative acts that impose disciplinary punishments may file an appeal for reversal before the body that issued it, and lodge an appeal with the body immediately superior.

In the case of the agent, the latter must present the appeal for reversal with the official that imposed the punishment. Should it be rejected, he may appeal to the official's immediate superior, stating the grounds for his petition. By the same token, he may appeal the decisions delivered by successive instances before the instance next above, until the case is definitively closed by the decision issued by the mayor or the competent official prescribed by the municipal organic law in force. In all cases, appeals shall be filed within twenty-four (24) hours from notification of the decisions that go against the agent. None of the aforementioned successive instances may deliver a ruling without there being attached a full copy of the records of the agent's case.

6. On the basis of the aforesaid provision, Mr. Palacios was dismissed from his post of municipal accountant at the Municipality of Daireaux, Province of Buenos Aires, by virtue of the Decree of June 11, 1985, issued by the mayor of that municipality. In opposition to the aforesaid decree, on August 23, 1985, Mr. Palacios brought a contentious administrative suit against the Municipality of Daireaux before the competent tribunal, the Supreme Court of Justice of the Province of Buenos Aires, moving for annulment of the act that prescribed his dismissal from the post of Municipal Accountant, on grounds of insufficient cause to warrant the punishment. In the complaint, the petitioner also requested reinstatement in his former job and compensatory damages.

7. With a ruling delivered on June 9, 1987, the aforesaid court dismissed in limine the petitioner's contentious administrative suit on grounds of "formal inadmissibility (Articles 1, 28, and 36 of the Civil Procedural Code of Argentina - C.P.C.A.), by virtue of failure to submit an appeal for reversal before the administrative authority, before instituting judicial proceedings." The aforesaid ruling stated the following:

... by virtue of the legal system that governs administrative procedure in this case, the requirement stipulated by the doctrine of the court to the effect that it is obligatory to present an appeal for reversal of the administrative act whose review is intended, has not been fulfilled (case B. 50.359 "Lesieux", res. of 11.XII.86; Art. 1, 28, clause 1 of the C.P.C.A.; Art. 89 of General Ordinance Nº 207 - amended by General Ordinance Nº 233), the only exception for this requirement being in the case of dismissal of petitions heard by superior instance (according to doctrine Case B. 47.900 "Bretal", ruling. of 31.VII.79) or by competent administrative authority in an appeal proceeding (in accordance with the aforementioned Case B. 50.359).

8. Appealing the court's decision, Mr. Palacios filed a federal extraordinary appeal with the Supreme Court of the Nation, alleging that the rejection in limine of his claim denied him access to justice.

9. The Supreme Court rejected this federal extraordinary appeal on November 10, 1987, on grounds that "no arbitrary action was found that warranted its intervention in matters which, under Article 14 of Law 48, lie outside its special jurisdiction."

III. PROCESSING BY THE COMMISSION

10. On May 16, 1988, the Argentinean State sent information in connection with the case, attaching a copy of the record of "Palacios, Narciso v Municipality of Daireaux. Contentious Administrative Suit, Case B. 50.402, Supreme Court of Justice of the Province of Buenos Aires"; with final judgment of the Supreme Court of Justice of the Nation.

11. On May 31, 1988, the Commission sent a communication to the petitioner acknowledging receipt of his communication of May 19, 1988 and informing him that his case had been opened. On August 26, 1988, the State requested the Commission for an extension in order to respond to the request for pertinent information.

12. On September 26, 1988, the Commission granted an extension of 60 days, which period expired on November 26, 1988. On November 30, 1988, the State sent its reply, challenging the admissibility of the case on grounds of Article 47 of the Convention and Article 41 of the Commission's Regulations.

13. On September 8, 1989, the petitioner's observations were forwarded to the State. Subsequently, in accordance with Article 34 of the Commission´s Regulations, the Executive Secretary of the Commission requested information on the instant case. That information was received on November 30, 1989 and contained a request from the State to declare the petition

lodged by the petitioner inadmissible. This reply from the State was forwarded to the petitioner on December 6, 1989.

14. On October 25, 1993, the Commission requested information from the petitioner in connection with the case, to which end it granted him a period of 60 days. Accordingly, on December 22, 1993, the petitioner submitted his final observations. This report sent by the petitioner was subsequently forwarded to the Argentinean State, with the request that it make the relevant observations.

15. On May 6, 1994, the Argentinean State presented its final observations, which were forwarded to the petitioner on May 12 that same year. The petitioner, in turn, submitted his observations to that brief on June 17, 1994. On July 21, 1994, the Commission received the reply of the Argentinean Government, in which it states that there have been changes in jurisprudence since the facts, but that these changes are not applicable retroactively; it considers that there were suitable remedies at the time the claim was filed and, consequently, requests the petition be declared inadmissible and rejects a friendly settlement. These observations were forwarded to the petitioner on August 10, 1994 and replied to on March 8, 1995.

16. On May 17, 1995, the Commission proposed initiation of a friendly settlement procedure in accordance with Article 45 of its Regulations, which was rejected by the Argentinean State on June 28, 1995. This decision was communicated to the petitioner on July 12, 1995.

17. On examining the merits of the case the Commission approved Report Nº 74/98 on September 28, 1998, during its 100th regular session, in accordance with the provisions contained in Article 50 of the American Convention. The Commission transmitted Report 74/98 to the State on October 14, 1998 and, in accordance with Article 50 of the Convention, granted it a period of two months in which to adopt the necessary measures in order to comply with the recommendations. Given that by May 7, 1999, the matter had not been settled or submitted by the Commission or by the State to the Court, the Commission approved Report Nº 80/99 reiterating the conclusions and recommendations adopted in Report Nº 74/98, pursuant to the provisions set forth in Article 51(1) and (2) of the Convention, and prescribed a period of one month for the State to comply. The State failed to submit any reply during the period granted to it.

IV. POSITIONS OF THE PARTIES

A. The petitioner

18. The petitioner alleges that his right to a fair trial (Article 8) and to effective judicial protection (Article 25) of the American Convention were violated as follows:

19. The petitioner did not have access to a judicial remedy deciding the nullity of Decree Nº 226 of June 11, 1985, issued by the Mayor of Daireaux, mandating his dismissal from the position of municipal accountant. To support his petition, he alleges that the decision of the Supreme Court of the Province of Buenos Aires found the lawsuit to be inadmissible in límine on

grounds that the administrative procedures had not been exhausted with the filing of an appeal requesting reversal of decision provided for in Article 89 of General Ordinance Nº 207/77.

20. The petitioner also states that the Supreme Court of the Nation, upon taking up the extraordinary appeal against the decision adopted by the Supreme Court of the Province of Buenos Aires, found no action of an arbitrary nature that warranted its intervention in matters that, pursuant to Article 14 of Law 48, are outside its special jurisdiction, and, therefore, declared the appeal inadmissible.

21. The petitioner adds that the Supreme Court of Justice of the Province of Buenos Aires unexpectedly and arbitrarily changed its interpretation of the law with respect to whether or not it is mandatory first to file an appeal for reversal of decision in order for the administrative process to be considered exhausted. Accordingly, the change in the interpretation of law brought about by the judgment which the petitioner challenged violates the core principles of legal security and procedural good faith, given that, at the time the petitioner filed his contentious administrative suit, the courts' interpretation of the municipal provisions in force did not require exhaustion of the administrative process.

22. In the petitioner's opinion, following this case the Supreme Court of the Nation suspended decisions on extraordinary appeals in such matters until finally it revised its criterion in the judgment in the case of SACOAR S.A.I. and C., delivered on October 13, 1988. In that decision, the Supreme Court of the Nation reaffirmed that an appeal for reversal filed in proceedings decided by the administrative authority with final jurisdiction over a matter is optional in the case of a hearing or the participation of the interested party in the proceeding establishing the act. With that criterion, the Court reverted to its initial position with respect to exhaustion of the administrative process, which is the very one it held at the time the petitioner brought his suit.

23. The petitioner affirms that it is not accurate to say that the administrative remedy procedure was omitted since, moreover, the appeal provided for in Article 89 of General Ordinance Nº 207-77 mentioned above presupposes punishments imposed by officials less senior than the Mayor, not those emanating from the Mayor himself.

24. The petitioner also alleges that an appeal for reversal violates the American Convention if the intention is to demand it as a procedural prerequisite for filing a contentious administrative suit, in light of the peremptory nature of the period of twenty-four (24) hours in which it may be lodged, which makes adequate exercise of the right of defense impossible.

25. The petitioner adds that the judgment demanding an appeal for reversal is based on an "unnecessary ritualism that frustrates substantive law" and constitutes "a denial of the principle of justice administration." Lastly, the petitioner alleges violation of his right to honor and dignity enshrined in Article 11 of the American Convention.

26. To support his petition, the petitioner submitted to the Commission several judgments delivered by the Court, including the case of Héctor Luis Re of April 24, 1984, SACOAR S.A.I

and C. of October 13, 1988, and other doctrinal documents illustrating the jurisprudence of that Court on such matters.

B. The State

27. The State requests that the petition be declared inadmissible on the basis of the following arguments:

28. The petitioner omitted “the administrative appeal process and took his claim directly to the judicial authorities,” despite the fact that no legal impediment existed preventing Mr. Palacios from filing an appeal for reversal as provided for in General Ordinance Nº 207 of October 12, 1977 (amended by General Ordinance 233). By that token, the State asserts that the petitioner failed to invoke the appropriate administrative remedy in a timely fashion. Judicial remedies--the State pleads--cannot take the place of the mistaken presentation of a matter before the justice system without “risking the stability and security of a procedural system that, for the case in hand, provides two administrative instances and at least two judicial instances."

29. The Argentinean State affirms that a distinction must be made between the guarantee of obtaining justice and breach of pre-established rules of procedure. In challenging the decisions of the Argentinean courts, the appellant "does not argue, as grounds for his position, that the legal code in force in the national and provincial sphere infringes upon the rights protected by the Convention," but, rather, "attempts to show that the courts have applied the law wrongly and that their decisions violated Articles 8 and 25 of the Convention".

30. The State argues that basis of opinion in the cases cited by the Court in the "Bretal" and "Lesieux" cases is materially different from that examined in the proceeding instituted by Mr. Palacios, where there was no prior exhaustion of any administrative remedy. By that token, the Supreme Court of the Province of Buenos Aires invoked the jurisprudence of the "Bretal" case, according to which it was not necessary to file an appeal for reversal when a prior appeal to the higher administrative authority had been presented and rejected. In other words, if an “appeal to a higher administrative authority” is presented unsuccessfully before the administrative authorities, it is unnecessary also to appeal for “reversal” in order to validate judicial control. Furthermore, the State maintains that in the "Lesieux" case the interpretation that emerged from the "Bretal" case is made clear when it is stated that it is not obligatory to file an appeal for reversal when the superior organ has intervened as a result of an appeal to a higher administrative authority filed with the inferior authority instead of an appeal for reversal.

31. The State contends that the aforementioned jurisprudence "does not lapse into the excessive formalism of demanding the filing of an appeal for reversal, when the act is precluded by an appeal to a higher administrative authority”; however, it deems it indispensable when no petition whatever has been lodged against the decision.

32. With regard to the precedent invoked by the petitioner, the State contends that "it is not binding for the judge and his decision shall not be potentially applicable to future cases." In that sense, "jurisprudence can never be static and will necessarily vary as the men in charge of

judging change, or as their ideas evolve as a result of new arguments put forward by parties or of their own experience."

33. Furthermore, the State avers that the Supreme Court of the Nation examined the decision of the Supreme Court of the Province of Buenos Aires and ruled that it was not arbitrary and that the petitioner failed to present against that judgment any basis for violation of the Convention. The State claims that "there is a clear difference between the right to a fair trial and its being taken to imply a desirable outcome for the appellant." The failure to table an appeal for reversal "substantially curtailed the State's possibility of reviewing any error or examining legitimacy and desirability."

34. In relation to the effects of the changes in the court's jurisprudence, the State pleaded that the highest court of the Nation has stated that decisions of the Supreme Court only determine the outcome of the concrete case submitted for its consideration and are only legally binding therein. It is on that premise in particular that the difference between the legislative and the judicial function rests (Judgments 25-368). This position was reiterated in the judgment of October 9, 1990, which states that "from time immemorial this Court has maintained that the guarantee of equality amounts to the right of all that no privileges or exceptions be established that exclude some from that which is granted to others in the same circumstances (Judgments 101-401; 124-122; 126-280; 127-167; 137-105; 151-359; 157-28; among many others), this principle being applicable to a law that addresses situations that are the same differently; but which cannot, by analogy, apply to changes in jurisprudence that does not constitute a federal matter at all (E.D. 141:100)".

35. As regards the change in the jurisprudence applied in the "SACOAR" case in October 1988--which was decided after the instant case--, newly admitting the criterion that an appeal for reversal is optional in proceedings decided by the administrative authority with final jurisdiction and in which there is a hearing for and participation of the interested party, the State alleges that, generally speaking, the effects of a change in jurisprudence are intended for future cases, in keeping with the generally recognized principle of law of non-retroactivity of legal norms. That does not imply revision of cases that have already been decided since that would equate to an infringement on the force and effect of a judicial decision.

36. The State declares, furthermore, that, at the time that the facts in the petitioner's case occurred, the system of laws in force in Argentina offered suitable adequate and effective domestic remedies, which were available and exhausted. By that token, "the mere fact that a domestic remedy does not produce a result favorable to the petitioner does not in and of itself demonstrate the inexistence or exhaustion of all effective domestic remedies. For example, the petitioner may not have invoked the appropriate remedy in a timely fashion."[FN1]

[FN1] The State cites the Inter-American Court of Human Rights, Velasquez Rodriguez Case, Judgment of July 29, 1988 (Ser. C) Nº 4, para. 67.

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37. The State maintains that it cannot be assumed that the judgment of the Supreme Court of the Nation is not a firm one because a petition is pleaded before the Inter-American Commission on Human Rights. It recalls that the Commission has stated that it is not its function “to act as a quasi-judicial fourth instance and review the holdings of the domestic courts of the OAS member States"[FN2] Thus, it has stated that it may not abrogate nor annul the judgment of a domestic court but that beyond doubt it could point out that a provision of domestic law or a court judgment negates a human right that the State undertook to respect in a treaty that is internationally binding.

[FN2] Annual Report 1987-1988, p. 159.

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38. The State rejects that the petitioner has been denied a simple and prompt recourse, or any other effective recourse, to a competent court or tribunal, as foreseen in Article 25 (2) of the Convention. The claimant, the State concludes, did not obtain a court judgment that was favorable to his petition, and that is only a possibility and not a right.

V. ANALYSIS OF ADMISSIBILITY

39. The Commission proceeds to analyze fulfillment of the requirements set out in Articles 46 and 47 of the American Convention.[FN3]

[FN3] The recent practice of the Commission has been to pronounce its opinion on the admissibility of petitions on cases in advance and separately. Nevertheless, the IACHR has also made express exceptions to this general practice. In the instant case it took into account the time elapsed since the case was opened before the Commission.

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40. Both the petitioner and the State allege and recognize that domestic remedies were exhausted with the judgment of the Supreme Court of the Nation. The Commission finds that requirement of prior exhaustion of domestic remedies established in Article 46 (1)(a) of the Convention was met.

41. The Commission also notes that the decision of the Supreme Court of the Nation was delivered on November 20, 1987 and that the petitioner lodged his petition with the Commission on May 20, 1988. The petitioner complied with the requisite interval of six months provided for in Article 46(1)(b) of the American Convention.

42. The Commission concludes that in the instant case the formal requisites of admissibility set forth in the American Convention and the Regulations of the Commission have been met, by virtue of the fact that the domestic remedies have been pursued and exhausted and the petitioner has complied with the required six-month period prescribed in Article 46 of the American Convention.

43. The Commission considers that the arguments presented by the petitioner tend to establish possible violations of the American Convention in accordance with Article 47(b).

44. Lastly, insofar as may be surmised from the contents of the record under examination by the Commission, the petition is not pending in another international proceeding for settlement, nor is it substantially the same as one previously studied by the Commission, and, therefore, it meets the requirements established in Articles 46(1)(c) and 47 (d) of the Convention.

VI. ANALYSIS OF THE MERITS

45. In principle, according to the "fourth instance formula", the Commission cannot review judgments issued by the domestic courts acting within their competence and with due judicial guarantees, unless it considers that a possible violation of the Convention is involved.[FN4] The Commission has also stated that it was competent to declare a petition admissible and rule on its merits when it portrays a claim that a domestic legal decision constitutes a disregard of the right to a fair trial, or if it appears to violate any other right guaranteed by the Convention.

[FN4] Annual Report 1988-1989. Resolution Nº. 15/89, Case 10.208 (Dominican Republic), April 14, 1989, and Annual Report 1996, Marzione Case (Argentina), p. 89, paragraph 50.)

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46. In the instant case, the petitioner alleges violation of his rights to a fair trial and to effective judicial protection established in Articles 8 and 25 of the American Convention, on grounds that the decisions of the Provincial Supreme Court and the Supreme Court of the Nation were arbitrary by unexpectedly changing their jurisprudence on whether or not it is obligatory first to invoke administrative remedies before instituting a contentious administrative proceeding.

47. The basis of the petition alleging infringement on the rights to a fair trial and to effective judicial protection lodged by the petitioner is that, at the time he brought his contentious administrative suit against the administrative decree that mandated his dismissal, the provisions in force and the legal interpretation thereof considered the invocation of administrative remedies (for reversal and to a higher administrative authority) to be optional and not a precondition for acceding to a judicial proceeding.

48. The Commission notes, first, that Article 89 of the provincial provision applicable to the petitioner's case, that is, General Ordinance Nº 207 of October 12, 1977 (amended by General Ordinance 233), provides that the punished person shall be able to file an appeal for reversal. As one can observe, in using the verbal configuration "shall be able to" the provincial provision would appear to give the appellant the choice of exhausting the administrative process or straightaway instituting administrative proceedings, thus confirming a system of remedies of an optional nature, such as is currently in use in the majority of modern legal systems. Furthermore, if to this literal interpretation one adds the legal interpretation that the highest provincial courts had been applying to that text at the time the petitioner brought his administrative suit, it seems

clear that the rules of play that defined the principle of due process did not require exhaustion of administrative proceedings as an obligatory prerequisite for acceding to judicial proceedings.

49. Indeed, in the decision of the Provincial Supreme Court in the case of "Héctor Luis Re" of April 24, 1984, also contesting a provincial administrative decree that ordered the dismissal of provincial employee, it was stated that:

This Court has already ruled that an appeal for reversal against acts of the Provincial Executive Power (Case B.48.073, Gunawardana, Judgment of June 3, 1980, D.J.B.A., t. 119, p. 507), or against acts of the mayor in matters of his competence (Case B.48.505, Noren Plast, Judgment of September 28, 1982, D.J.B.A., t. 124, p. 82), in order to validate administrative proceedings, is optional when the challenged act has been rendered with a hearing or the participation of the interested party, unless it should prove that its filing is clearly required by the rules governing the applicable procedure (Case B.48.505. cit.; conc. Cases B.46.067, S.C.T..A.L.L., Judgment of October 18, 1977; B.48.042, Gil, Judgment of October 30, 1979; B.47.576, Fundar, Judgment of March 4, 1980, D.J.B.A., t.118, p. 151, among others).

By that token, and given that the structure of a summary disciplinary proceeding basically provides for the intervention of the interested party in exercise of his right to defense, there is no reason for the respondent Municipality to insist on the obligation to file an appeal when, on the contrary, it clearly emerges from the provision contained in Article 89 of General Ordinance Nº 207 that its filing is optional.

50. Similarly, authorized doctrine had acknowledged the optional nature of provincial administrative remedies prior to the "Lesieux" decision of 1986. Thus, Cassagne, an Argentinean jurist, commenting on a later decision delivered in 1988 (Sacoar), which annulled the aforesaid "Lesieux" judgment, stated that,

The Provincial Supreme Court had performed a veritable about-turn by reverting to an old doctrine that refused access to justice based on technicalities. A conspicuous favorite among these technicalities was the mandatory nature of the appeal for reversal, despite the fact that this course is not stipulated as being obligatory and generally applicable by any provision in the provincial system of laws. (Underlining added)[FN5].

[FN5] Juan Carlos Cassagne, Appeal for reversal and validation of judicial proceedings in the Province of Buenos Aires, El Derecho newspaper, Universidad Católica Argentina, Nº 7246, May 23, 1989.

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51. Furthermore, the current juridical interpretation of the legal text, which was applied to the petitioner in order to refuse the admissibility of his contentious administrative suit, for failure to exhaust the administrative process, consists of maintaining that these administrative remedies are of an optional nature and, therefore, do not constitute a requisite sine qua non for leaving the way clear for initiating judicial proceedings.[FN6]

[FN6] See the decisions delivered by the Supreme Court of Buenos Aires in the cases: Sacoar S.A.I. and C., dated October 13, 1988; Héctor Rabinovich, of June 1, 1989; Fausta Inés Negro, of June 27, 1989; and Horacio Ayude, of July 7, 1993. In other words, there has been a return to the criterion in effect at the time the petitioner filed suit.

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52. The Commission notes that it has been shown that, prior to the filing of the contentious administrative suit on August 23, 1985, and, moreover, after the decision in that particular case, on June 9, 1987, the correct interpretation of General Ordinance Nº 207 of October 12, 1977, deemed the administrative process to be optional and, therefore, unnecessary for acceding to contentious administrative proceedings.

53. Accordingly, at the time the petitioner brought his contentious administrative suit there was no legal provision or doctrine applicable to his case that considered exhaustion of the administrative process to be a necessary prerequisite for filing a contentious administrative suit. On the contrary, it was in 1986--after the petitioner's suit had been filed--, that the Supreme Court of the Province of Buenos Aires changed its criterion in the "Lesieux" case in order then to demand exhaustion of the remedies set forth in Article 89 of General Ordinance Nº 207 of October 12, 1977. Consequently, the following year, in keeping with the new line of jurisprudence, the Supreme Court of the Province of Buenos Aires rejected the suit brought by the petitioner for not having pursued the pertinent administrative remedies.

54. It now devolves upon the Commission to determine if this retroactive application of the provincial body of laws by the Supreme Court of the Province of Buenos Aires violates the rights to a fair trial and to effective judicial protection enshrined in Articles 8 and 25, respectively, of the American Convention on Human Rights.

55. The aforesaid provisions of the Convention expressly provide that:

Article 8 Right to a Fair Trial

1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature....

Article 25. Right to judicial protection

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.
2. The States Parties undertake:

a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
b. to develop the possibilities of judicial remedy; and
c. to ensure that the competent authorities shall enforce such remedies when granted.

56. It is clear from both provisions that everyone is guaranteed respect for the basic rules of procedure, not only as regards access to the courts, but also with respect to effective fulfillment of court decisions. On that score, this Commission has stated that the judicial protection provided by the Convention includes the right to fair, impartial and prompt proceedings which give rise to the possibility, but never the guarantee, of a favorable outcome.[FN7]

[FN7] Report Nº 39/96, Case 11.673 of October 15, 1996, para. 47.
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57. The principle of effective judicial protection can translate as a guarantee of free access to the courts for the defense of rights and interests before the State, even should ordinary legality not recognize a concrete recourse or action. This principle logically implies a set of guarantees in processing judicial processes.

58. However, the situation may arise where uncertainty or lack of clarity in the recognition of these admissibility requirements constitutes a violation of the aforesaid fundamental right.

59. That is precisely the situation in the instant case, where failure to exhaust administrative proceedings cannot, in any way, be imputed to the petitioner, since he simply allowed himself to be guided by the correct and authorized interpretation of the provisions in force that applied to him, and which--at the time of filing his suit--allowed him to institute administrative contentious proceedings without the need to exhaust administrative remedies.

60. In effect, as the Commission has already observed ut supra, the rejection of the petitioner's suit was grounded on a legal interpretation after the date of filing his suit, which was applied to his case retroactively. Therefore, it was not a question of an omission or rashness on his part, but of a drastic change in interpretation of the provision that the courts applied retroactively to his detriment.

61. It is precisely this type of irregularity that the right to effective judicial protection guaranteed in Article 25 of the Convention tries to impede by preventing access to justice from becoming a disagreeable game of confusion to the detriment of members of the public. The guarantees of effective judicial protection and of a fair trial demand a fairer and more beneficial interpretation in the analysis of requirements of admission to justice, to such an extent that, under the pro actione principle, it is necessary to go expand possible interpretation in the direction that most favors access to justice.

62. The Argentinean State did not manage to demonstrate to the Commission that the petitioner's failure to exhaust the administrative process was due to his own negligence rather than a court interpretation applied to him retroactively. On that point, the Commission considers

that the principle of legal security demands greater clarity and explicitness in the obstacles for obtaining justice.

63. At the same time, the scope of this fundamental right to effective judicial protection makes it possible to avoid new legal criteria being applied to previous situations or cases. This situation has been recognized by the Supreme Court of the Nation itself, specifically in the Tellez case, where it asserted the following:

Nevertheless, it does not escape the notice of the Court that the application in time of new established criteria, must be overseen with particular caution in order that the accomplishments achieved not be ruined at that juncture. To that end, it is necessary to fix the dividing line outlined by Benjamín N. Cardozo for the workings of new jurisprudence, supporting it on reasons of convenience, utility and the most profound sense of justice possible.][FN8]

Such a need involves, in turn, fixing the precise moment from which that change begins to take effect.] [FN9]

... as a result of these developments, it should be mentioned that the new legal guidelines contained in re, Strada, must only be put into practice in the case of federal extraordinary appeals against judgments delivered served after that precedent.

[FN8] Cardozo, Benjamin N. The Nature of the Judicial Process, p. 148 f., Yale University Press, 1937 [Here re-translated from Spanish, not exact original wording]
[FN9] Roubier, Paul, Les Conflits des Lois et le Temps, pp. 27 and 28, Ed. Recueil Sirey, Paris, 1929.

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64. In a brief submitted to the Commission on May 10, 1994, the Argentinean State itself also recognizes that the effects of a change of jurisprudence apply to future cases, in accordance with the generally recognized legal principle on non-retroactivity of legal provisions.

65. In conclusion, this Commission finds that the petitioner’s rights to effective judicial protection and to a fair trial, enshrined in Article 25 of the Convention, were violated when he was surprised with the retroactive imposition of a requirement of admissibility to justice that was not valid at the moment he filed suit. Legal security and the principle of clarity and certainty in respect of competent jurisdiction demand greater rigor when it comes to barring access to justice.

66. In the instant case the petitioner was prevented--by both the administrative and the judicial authorities--from obtaining justice and, in consequence, appealing the legality of the administrative decree that mandated his dismissal, by virtue of a drastic and retroactive change in the interpretation of the admissibility requirements for bringing a contentious administrative suit. This situation infringes on the right to effective judicial protection and constitutes an example of a manifest inequality.

VII. CONCLUSIONS

67. Based on the foregoing analysis, the Commission reiterates the following conclusions:

1. That at the time the petitioner filed his contentious administrative suit, on August 23, 1985, against the administrative decree of June 11, 1985, issued by the Mayor of Daireaux, mandating his dismissal from the post of municipal accountant, it was not necessary to exhaust the administrative process in order to accede to contentious administrative proceedings.

2. That the petitioner was denied access to this proceeding, by virtue of the retroactive application of a jurisprudential criterion that altered the interpretation of a legal provision applicable to his case.

3. That, by virtue of this situation the Argentinean State was in breach of its obligation to recognize and guarantee the rights to effective judicial protection and to a fair trial enshrined in Articles 25 and 8, respectively, of the American Convention.

VIII. RECOMMENDATIONS

68. Based on the above analysis and conclusions, the Inter-American Commission reiterates the following recommendations to the Argentinean State:

1. To permit the petitioner access to contentious administrative proceedings, in order that he might appeal the legality of the administrative act that mandated his dismissal.

2. To provide the citizen Narciso Palacios adequate compensation for violation of his rights to effective judicial protection and to a fair trial.

IX. NOTIFICATION AND PUBLICATION

69. On October 14, 1998, the Commission transmitted to the State Report Nº 74/98 approved on September 28, 1998, during its 100th regular session, and requested it to provide information on the measures adopted to comply with the recommendations of the Commission and to resolve the situation described in the petition within the two-month period, counted from the date of that communication. In addition, on the same date the Commission informed the petitioner that it had approved a report of a confidential nature, in accordance with Article 50 of the American Convention.

70. On December 14, 1998, the State replied to the request for information in respect of this case. In its reply it said the following: “The Government reports that contacts are being established and negotiations entered on with the local authorities that have jurisdiction over the affairs that are the subject matter of Case 10.914. The illustrious Commission will be kept informed as to the outcome of those negotiations.”

71. On May 7, 1999 the Commission approved Report Nº 80/99 pursuant to the provisions contained in Articles 51(1) and (2) of the Convention reiterating to the Argentinean Republic its conclusions and recommendations. The Commission transmitted the report to the State on May

17, 1999, and granted it a month to comply with the recommendations. The Commission also decided to transmit this report to the petitioners. Neither the State nor the petitioners were authorized to make the report public until the Commission adopted a decision in that regard. To date the Argentinean Republic has not replied to the Commission. Only the petitioner sent a communication on July 21, 1999, in which he indicates his conformity with the contents of the report.

72. Based on the information provided, the Commission decided to ratify to the Argentinean Republic the conclusions and recommendations contained in Chapter VIII hereinabove. Furthermore, inasmuch as the State had failed to comply with the recommendations contained in Chapter VIII hereinabove, the Commission also decided to publish the instant report in accordance with Article 51(3) of the American Convention and Article 48 of its Regulations. Pursuant to the provisions contained in the instruments that govern its mandate, the Commission shall continue to monitor compliance with the recommendations formulated, until such time as they have been fulfilled by the State.

Done and signed by the Inter-American Commission on Human Rights, in the city of Washington, D.C., on this the 29th day of September of 1999. (Signed): Robert K. Goldman, Chairman; Hélio Bicudo, First Vice-Chairman; Claudio Grossman, Second Vice- Chairman; Alvaro Tirado Mejía, and Jean Joseph Exumé, Commission members.